ATC/Vancom of California, L.P. *and* Chauffeurs, Sales Drivers, Warehousemen and Helpers, Local 572, International Brotherhood of Teamsters, AFL–CIO

ATC/Vancom of California, L.P. *and* George Rodriguez , Petitioner

Chauffeurs, Sales Drivers, Warehousemen and Helpers, Local 572, International Brotherhood of Teamsters, AFL–CIO, Union *and* United Transportation Union, Intervenor. Cases 31–CA–24875, 31–CA–25022, and 31–RD–1434

May 7, 2003

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND ACOSTA

On December 14, 2001, Administrative Law Judge James M. Kennedy issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs[1] and has decided to affirm the judge's rulings,[2] findings, and conclusions and to adopt the recommended Order.[3]

[1] The Respondent has filed a motion to reopen the record and the General Counsel has filed a motion to strike portions of the Respondent's brief in support of exceptions. We deny the Respondent's motion, as the evidence the Respondent seeks to adduce has not been shown to be newly discovered and previously unavailable. We grant the General Counsel's motion because the Board will not consider facts or documents not made part of the record. *Wisconsin Steel Industries*, 318 NLRB 212, 216 fn. 17 (1995).

[2] We agree with the judge in finding no merit to the Respondent's argument that it was bound by California Government Code Sec. 16645 and thus was required to remove the Union's notices to maintain strict neutrality. The statute cited by the Respondent did not go into effect until January 1, 2001. The Respondent removed notices from the bulletin board on December 7 or 8, 2000, and again on December 14 or 15, and announced its new policy of removing all union literature on December 26. Thus, the unlawful activity occurred before the statute, on which the Respondent allegedly relied, went into effect. In light of this finding, we find it unnecessary to pass on the other reasons provided by the judge to reject the Respondent's affirmative defense.

We have entered a standard "cease and desist" Order, and we have directed a second election. In compliance with the Order, and in connection with that election, the Respondent would be required to restore the Union's access to the bulletin board. If, in the future, the Respondent is sued under the above statute, based on its actions in compliance with this Order, it may seek reconsideration of this Order. At that time, amicus briefs would be appropriate.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, ATC/Vancom of California, L.P., Santa Clarita, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that the election held in Case 31–RD–1434 be, and is, set aside, and that said case be, and is, remanded to the Regional Director for Region 31 to conduct a new election when he deems the circumstances permit the free choice of a bargaining representative.

[Direction of Second Election omitted from publication.]

Brian D. Gee, for the General Counsel.
James Foster and *Jeff Hackney (McMahon, Berger, Hanna, Linahan Cody & McCarthy)*, of St. Louis, Missouri, for Respondent/Employer.
Lourdes M. *Garcia (Wohlner, Kaplon, Phillips, Young & Cutler)*, of Encino, California, for Teamsters Local 572.
Daniel Elliott, of Cleveland, Ohio, for United Transportation Union.
George Rodriguez, of Lancaster, California, pro se, for the Petitioner.

DECISION

STATEMENT OF CASE

JAMES M. KENNEDY, Administrative Law Judge. This case was tried in Los Angeles, California, on October 22, 2001, based upon a consolidated complaint[1] issued by the Regional Director for Region 31 of the National Labor Relations Board. As modified by the severance, it is based upon an unfair labor practice charge filed on January 16, 2001, by Chauffeurs, Sales Drivers, Warehousemen and Helpers, Local 572, International Brotherhood of Teamsters, AFL–CIO (the Union). The complaint alleges that ATC/Vancom (Respondent) has committed certain violations of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). In addition, the Regional Director has ordered a hearing on two[2] union objections to the outcome of a representation election, Case 31–RD–1434, and has consolidated them with the unfair labor practice complaint. They track the remaining allegation of the complaint, paragraph 13.

[3] In light of our rulings, we deny both the Attorney General of California's motion for leave to file memorandum as amicus curiae, and the General Counsel's motion for leave to file a supplemental memorandum.

[1] Shortly before the hearing in this matter commenced, the Regional Director approved a settlement agreement in Case 31–CA–25022. Accordingly, that case was severed, and the corresponding paragraphs of the complaint were deemed to have been withdrawn.

[2] At the hearing the Union, through counsel, advised that it had earlier withdrawn Objections 3 and 4, leaving only 1 and 2 for resolution.

The Issues

George Rodriguez, the decertification petitioner, filed his election petition on November 30, 2000.[3] According to the complaint, shortly after that filing, Respondent barred the Union from posting notices on the drivers' room bulletin board, a board which was established by the collective-bargaining contract then in effect. Pursuant to a stipulated election agreement a representation election was held on January 3, 2001. The United Transportation Union (UTU) intervened in the election.[4] The principal issue as framed by the complaint is whether Respondent's barring the Union from using its contractually bargained-for bulletin board violated Section 8(a)(5) as a unilateral change in working conditions. In addition, it seems to me, it may properly be asked whether by that conduct Respondent repudiated a clause of the collective-bargaining contract and directly, within the language of Section 8(a)(1), interfered with the employees' right to receive communications from their statutory representative.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to orally argue, and to file briefs. The General Counsel, Respondent and both labor organizations have filed briefs which have been carefully considered. Based upon the entire record of the case, as well as my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

The pleadings, supplemented by the evidence, demonstrate that Respondent is a limited partnership which operates the city bus system for the City of Santa Clarita, including fixed routes, commuter services to downtown Los Angeles and the San Fernando Valley, and paratransit transportation for the elderly and the disabled. Respondent admits that during the past year it has derived gross revenues in excess of $250,000 and has received goods and services directly from sources outside California in excess of $2000.[5] Accordingly, it admits it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Furthermore it admits that the Union is a labor organization within the meaning of Section 2(5) of the Act. I so find.

The facts are largely uncontroverted. Respondent has operated the city of Santa Clarita bus system since 1996. It runs the business from a city-owned yard on West Avenue Stanford. During the period in question its approximately 100 coach operators were represented by the Union which had a collective-bargaining agreement which was in effect from November 1, 1996, to August 4, 2001. The Union has represented those drivers for least 10 years, including the period prior to Respondent's assumption of the transit contract from the city. Before 1996 the transit system had been operated by a predecessor.

Respondent's general manager is Ken Graska and its director of operations is Sheri Camuso. The Union has two stewards among the drivers, George Rodriguez and Oscar Franco Jr. In October the Union had been placed in trusteeship, resulting in the hiring of Business Agent Miguel Lopez and his assignment to Respondent in November.

Sometime in the middle of 2000, the UTU approached Rodriguez and asked him to solicit authorization cards on its behalf. Rodriguez agreed to do so and subsequently the UTU instructed him concerning the filing of a decertification petition. After a false start, on November 30 Rodriguez filed the instant petition. Pursuant to a Stipulated Election Agreement the election was scheduled for January 3, 2001. The UTU intervened and was placed on the ballot.

In the drivers' room[6] at the yard's administration building is a bulletin board in a case with glass doors. The right side is considered to be the Union's bulletin board, while the left is used for operational information. The Union's bulletin board was established by a clause in the 1996–2001 collective-bargaining agreement.[7] During the first 11 months of 2000, Rodriguez posted between 10 and 15 union notices on that board. When Lopez became the business agent, he introduced himself by posting two notices of his appointment (one English, one in Spanish) on the board. After they had served their purpose he removed them. Clearly the union bulletin board serves a material and substantial communication function. Moreover, until November, Respondent exercised no oversight over the board.

On December 7 or 8, Rodriguez posted a notice on Union letterhead announcing a special meeting for all drivers/operators to be held on December 9 at a local hotel. The announcement contained no other information and did not describe the purpose of the meeting. Of course, the meeting was to discuss the decertification election which had just been scheduled.

Operations Manager Camuso observed the notice and promptly removed it from the board. When Rodriguez asked her who had removed the notice, Camuso acknowledged that she had done so, explaining that a corporate decision had been

[3] All dates are the year 2000 unless otherwise indicated.

[4] The voting unit covered all full-time and regular part-time bus operators employed by the Employer at its Santa Clarita, California operation, excluding office clerical employees, all other employees, maintenance employees, guards and supervisors as defined in the Act. The tally shows that in a voting unit of approximately 98 employees, 76 votes were cast for representation by the UTU, 10 in favor of the Union and none for no representation.

[5] Therefore, it meets the standard for the assertion of jurisdiction over local transit systems. See *Charleston Transit Co.*, 123 NLRB 1296 (1959).

[6] The drivers' room is *a* break room in which are located vending machines, a refrigerator, tables, chairs, a television set, and the dispatch window. It is commonly used by drivers in between their split shifts.

[7] Art. VIII, sec. 5 of that collective-bargaining contract reads: "The Company agrees to provide space for a bulletin board for union use. Postings by the Union on this board are to be confined to formal notices of meetings, elections, names of representatives and officers of the Union, and recreational or social events of the Union. Postings not on union letterhead shall be initialed and dated by the business agent, and shall be removed from the bulletin board after they have served their purpose or 2 weeks after posting. All other notices shall be submitted to management for approval."

made to remove it. Rodriguez told her she could not do so, noting the Union's contractual right to post such notices.[8]

On December 14 or 15, Rodriguez posted a similar notice, this time for a meeting at a local pet shop on December 16. Within hours Camuso had removed it as well.

This prompted Rodriguez to notify Lopez about the problems he was having and on December 18 a meeting was conducted between Camuso, Lopez, Rodriguez, and Franco. During the meeting Lopez advised Camuso that Respondent was breaching both the contract and the law by removing the notices from the Union's board. She replied that corporate headquarters had told her that Respondent had to remain neutral in the election and because of that it would no longer allow the Union to post notices concerning the upcoming election.

On December 26 another meeting was conducted. This time Respondent's officials were General Manager Graska, Camuso and Safety Director Cheryl Lindh while the Union's representatives were the same. The initial portion of the meeting was devoted to some outstanding grievances, but it concluded with Graska handing out a memo directed to "all employees" concerning the posting of union materials. In its entirety the memo reads:

> In accordance with California law please be advised that in order to maintain a "neutral" workplace, all union literature of any kind will now be prohibited from being placed on any bulletin board including those previously utilized by any union or labor organization. We are publishing this policy to insure that we maintain "neutrality" in the workplace and do not favor one union or another in the current contest between the UTU and the Teamsters Local 572.
>
> It is our stated policy not to interfere with an employee's choice about whether to join or be represented by a labor union. Accordingly, to preserve our "employer neutrality" we want to insure that we are not assisting, promoting, or deterring union organizing.
>
> Accordingly, there shall be no literature posted of any kind by either the UTU or the Teamsters on the bulletin boards unless it is approved by management in advance. Anyone caught tampering with the locks or otherwise posting material on top of the glass cover will be subject to disciplinary action.
>
> Thank you for your cooperation.

Despite Respondent's assertion that neither union would be permitted to post material, Rodriguez testified that UTU campaign material remained posted elsewhere in the building, specifically next to the dispatch desk. He had posted it there himself.[9] When he told Camuso it was up, it was removed as well.

At no time prior to Camuso's removing the Union's first notice on December 8 had Respondent advised the Union of its intention to bar the Union from its bulletin board. Indeed, on December 26, the decision was presented as a fait accompli.

II. LEGAL ANALYSIS

The General Counsel asserts that Respondent's unilateral action in barring the Union from its own bulletin board is a breach of the bargaining obligation and a straightforward violation of Section 8(a)(5) and (1). Furthermore, it would appear that interfering with the Union's ability to communicate with its constituency is a straightforward interference with the employees' exercise of their rights under Section 7 to communicate with their statutory representative. These theories will be explicated more fully below.

First, however, I shall touch upon Respondent's general contentions. It has, relying on a California statute, asserted that it was only seeking to demonstrate its neutrality during the course of the election campaign. While the argument sounds equitable, in fact it is specious from the outset, for it entirely ignores an employer's actual responsibility as set forth under the Act. Any discussion of an employer's obligations to the election process must begin with the fundamental concept that an employer may not change the status quo if the change may reasonably affect the outcome of the pending election. This doctrine is most commonly invoked when an employer grants a benefit to employees before an election. The rule, commonly stated, is that the employer is obligated to act as if the union is not in the picture. See the seminal case of *McCormick Longmeadow Stone Co.*, 158 NLRB 1237, 1241 (1966). In *McCormick*, the Board adopted Trial Examiner Reel's decision which held: "[A]n employer's legal duty in deciding whether to grant benefits while a representation case is pending is to determine that question precisely as he would if a union were not in the picture. If the employer would have granted the benefits because of economic circumstances unrelated to union organization, the grant of those benefits will not violate the Act. On the other hand, if the employer's course is altered by virtue of the union's presence, then the employer has violated the Act." Also *J. & G. Wall Baking Co.*, 272 NLRB 1008, 1012 (1984), and see *House of Raeford Farms*, 308 NLRB 568, 569 (1992), enfd. 7 F.3d 223 (4th Cir. 1993), where the Board in dealing with an employer who had a preexisting policy of soliciting grievances said:

> The judge correctly observed that an employer who has had a past practice and policy of soliciting employee grievances may continue to do so during an organizational campaign. See, e.g., Lasco *Industries*, 217 NLRB 527, 531 (1975). It is well established, however, that an employer cannot rely on past practice to justify solicitation of employee grievances if the employer significantly alters its past manner and methods of solicitation during the union campaign. *Carbonneau Industries*, 228 NLRB 597, 598 (1977). *We* find that the Respondent's method of solicitation of grievances following the onset of the union organizing campaign clearly constitutes a significant alteration of its past practice.

Another example is *KOFY TV-20*, 332 NLRB 771 (2000), which held that an employer's election eve change of coffee breaktime from the beginning or the end of a shift to midshift in

[8] The UTU contends that the contract's bulletin board clause was not aimed at representation elections. The clause is, however, aimed at union meetings, which Rodriguez' notices clearly announced, and were without reference to the meetings' purpose.

[9] Rodriguez, apparently serving both unions, posted Teamsters material on its board (per its contractual right) and UTU material in other places where it might be seen, but not on the Teamsters board.

order to comply with state law, was an unlawful change of the status quo. A myriad of similar cases can be found as well. Therefore, neutrality, is not as Respondent would have it, an obligation to affirmatively level the playing field as it sees fit. Neutrality, instead, is the obligation to maintain the existing status quo (although there are some exceptions not applicable here).

Furthermore, another barrier to an employer's unilateral changes is interposed, as here, where a collective-bargaining contract is in effect. Section 8(d) of the Act mandates that the conditions established by the collective-bargaining contract shall be maintained until mutually altered (except in certain limited contract hiatus situations not present here). The pertinent portion of Section 8(d) is set forth in the footnote.[10] I have Italicized the most significant language.

Respondent seeks to avoid Section 8(d) by asserting that bulletin board matters are not mandatory subjects of bargaining. The UTU has taken a similar position. Yet, the Board and the courts have long held otherwise. See the cases cited by the General Counsel, *NLRB v. Proof Co*., 242 F.2d 560 (7th Cir. 1957), cert. denied 355 U.S. 831 (1957), enfg. 115 NLRB 309 (1956), *Arizona Portland Cement Co*., 302 NLRB 36, 44 (1991), and the cases cited therein at footnote 28. Moreover, as the General Counsel also observes, the Board has held in a nearly identical fact pattern that an employer violated Section 8(a)(5) and (1) when it unilaterally changed the bulletin board posting policy established on a union's behalf by a collective bargaining agreement even though controversial flyers had been posted there. *Formosa Plastics Corp., Louisiana*, 320 NLRB 631 (1996). See also *Arizona Portland Cement Co*., supra, *Pioneer Press*, 297 NLRB 972 (1990).[11]

Accordingly, absent any valid affirmative defense it is clear that Respondent was not privileged to unilaterally bar the Union from posting meeting notices on its bulletin board. Furthermore, I also find that by barring the Union from its own bulletin board, one which is established by a collective-bargaining contract, that Respondent made a midterm change, or more properly described, a midterm repudiation of a term of the agreement. That, too, violates Section 8(a)(5) and (1) of the Act. A case quite similar to this is *Frontier Hotel &* Casino, 309 NLRB 761, 766–767 (1992), enfd. sub nom. *Unbelievable, Inc.*, 71 F.3d 1434 (9th Cir. 1995). In that case the employer, contrary to the terms of its collective-bargaining contract, expelled union officials from its employee dining room, thereby changing a contractually established condition of employment. Adopting my decision the Board and the court found such conduct to be an improper midterm modification of the contract. And, of course, by removing this avenue of communication it tended to undermine the union as the statutory representative, also violative of Section 8(a)(5). The same observations must be made here.

In addition, in *Frontier*, the Board found that by expelling the union officials respondent directly interfered with the ability of the employees to receive communications from their statutory representative. That interference was a direct violation of Section 8(a)(1). When respondent barred the union from its own bulletin board, it likewise interfered with the ability of the employees to communicate with their statutory representative. This situation is hardly any different from *Frontier*. Accordingly, again absent a valid affirmative defense, I find Respondent's action here to be an independent violation of Section 8(a)(1) for it literally interferes, in the words of the statute, with the right/obligation of the Union to communicate with its constituency.[12]

Respondent has offered several defenses justifying its conduct. It first argues that its action had no effect on Rodriguez' ability to reach the employees. It cites Rodriguez' testimony asserting that it demonstrates that he contacted them anyway. A review of Rodriguez' testimony does not lead to that conclusion. He was asked if he had been "able to effectively communicate the dates and times and places, of the Teamsters meetings that occurred after notices were taken down from the bulletin board." His reply was, "I let them know about the meetings . . . employees . . . Well, I had to go and try to find them, one-on-one." Given the fact that there were 100 coach drivers to be reached, it seems quite unlikely that he was fully successful on both occasions. I find Respondent's argument to be unpersuasive.

Second, Respondent argues that its action could have had no coercive effect nor could it have affected the outcome of the election. This argument is not based on any factual assertion, only counsel's interpretation of the evidence. That interpreta-

[10] Sec. 8(d) [Obligation to bargain collectively] For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising there under, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract,* unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications,

(3) [omitted]

(4) [omitted]

. . . .

[11] Respondent suggests in its brief that it had become necessary to control the board because, according to its offer of proof, "tension and competition" was occurring between proponents of both unions. Yet it never offered to prove that the bulletin board had become a "battleground" [see *Nugent Service*, 207 NLRB 158 (1973); *Contra Costa Times*, 228 NLRB 692 (1977)], which might actually privilege such regulation.

[12] Sec. 8(a)(1) of the Act provides: "It shall be an unfair labor practice for an employer - to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7; . . . ."

tion flies in the face of Board law and experience. The Board has consistently held since *Dal-Tex Optical Co*., 137 NLRB 1782 (1962), that conduct violative of the Act is a fortiori conduct which interferes with the exercise of a free and untrammeled choice in an election. Indeed, contrary to Respondent's claim that it was only seeking to demonstrate its neutrality, its conduct actually had the effect of disfavoring and undermining the Union. Clearly, if the employees are determining to substitute one bargaining representative for another, they should be allowed to assess the incumbent's performance without an employer-imposed lens distorting their ability to appraise the situation.

Finally, viewing it as its strongest argument, Respondent contends that it was obligated to follow a California statute requiring employer neutrality during the representation process. I was unimpressed with the contention during the hearing and remain so.

The statute, California Government Code Section 16645, deals with state contractors performing work on state property and their use of state funds. In essence, the statute prohibits state contractors who perform their business on state property or who receive state monies from "assistant[ing], promot[ing], or deter[ing] union organizing by employees who are performing work on a service contract, including a public works contract, for the state or a state agency." In addition it bars the expenditure of state provided funds for the purpose of assisting, promoting or deterring union organizing.

The first observation to be made about the statute is that it did not become effective until January 1, 2001, only 2 days before the election. Therefore, it was not in effect during December when Respondent was removing notices from the Union's bulletin board and issuing its December 26 policy memo. The statute simply had no application, arguable or otherwise.

Second, Respondent has not been shown to be a state contractor. It is a contractor to a municipality, not the State of California. The statute is not directed to the counties or to the municipal corporations within the State. If it had been, the Legislature would have utilized language so saying. The Legislature clearly knows the difference between state agencies and cities. Again the statute has no application to Respondent.

Third, accepting Respondent's offer of proof to the effect that it receives about 10 percent of its funding from the State, there is no proof, nor even an offer of proof, that any of its state money was directed at regulating the bulletin board. The statute can have no application here.

Frankly, I find this proffered defense empty of logic. It is only smoke and mirrors, not a valid legal defense. There is, therefore, no need to discuss Respondent's further argument, that the statute is not preempted by the NLRA. Preemption, as an issue, is not ripe for decision.

Accordingly, as no valid defense has been raised, my finding Respondent to have violated Section 8(a)(5) and (1) stands as set forth above.

Recommendation Regarding the Election in Case 31–RD–1434

Rather clearly, the unfair labor practices found here are virtually congruent with the two objections to the outcome of the election filed by the Union. Therefore, I conclude, based upon the rule set forth in *Dal-Tex Optical Co*., 137 NLRB 1782 (1962), that the election should be set aside. In that case, the Board held that unfair labor practices occurring during the course of a representation election campaign is a fortiori conduct which interferes with the exercise of the employees' free and untrammeled choice in an election. See also *Diamond Walnut Growers*, 316 NLRB 36 (1995). Accordingly, I recommend that the Board set the election aside and direct that a second election be conducted after an appropriate remedial period as set forth in the unfair labor practice portion of this case.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The affirmative action will include an order to post a notice to employees advising them of the remedial steps it will take. The Regional Director will have the discretion to also require the notice be in any foreign language he deems appropriate.

On the foregoing findings of fact and the entire record in this case, I issue the following

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union and the UTU are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent's conduct in depriving the Union of access to its bulletin board violated the Act as follows:

(a) It deprived employees of access to their statutory collective-bargaining representative and thereby interfered with the employees' Section 7 right to union representation, a violation of Section 8(a)(1).

(b) It had the tendency of undermining the Union as the employee bargaining representative because the employees could no longer as readily receive communications from their representative, thereby violating Section 8(a)(5) and (1).

(c) It constituted a repudiation of the collective-bargaining contract clause designed to provide an information system from the Union to the employees and to protect the employees' Section 7 rights, thereby violating Section 8(a)(5) and (1).

(d) It constituted a unilateral change in a material and substantial term and condition of employment in circumstances where Section 8(d) of the Act prohibits the unilateral repudiation of collectively bargained terms and conditions and thereby violated Section 8(a)(5) and (1).

Based on the foregoing findings of fact and conclusions of law and the entire record, I issue the following recommended[13]

[13] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, ATC Vancom of California, L.P., Santa Clarita, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Depriving the Union of access to its bulletin board in a manner which

(b) Interferes with the employees' Section 7 right of access to their statutory representative or interferes with their right to receive communications from that representative.

(c) Tends to undermine the Union as the employees' statutory representative

(d) Constitutes a repudiation of a clause in the collective-bargaining contract clause designed to provide an information system from the Union to the employees and to protect the employees' Section 7 rights.

(e) Constitutes a unilateral change of a material and substantial condition of employment.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region post at its business in Santa Clara, California, copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 31 after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since December 8, 2000.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps Respondent has taken to comply.

Any outstanding motions which are inconsistent with the above findings are denied.

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT deprive Chauffeurs, Sales Drivers, Warehousemen and Helpers, Local 572, International Brotherhood of Teamsters, AFL–CIO of access to its bulletin board in a manner which:

Interferes with your Section 7 right of access to your statutory representative or interferes with your right to receive communications from their representative.

Tends to undermine Local 57 as your statutory representative.

Constitutes a repudiation of the bulletin board clause in the collective-bargaining contract.

Constitutes a unilateral change of a material and substantial condition of employment.

WE WILL NOT in any like or related manner interfere with, restrain, coerce you in the exercise of your rights guaranteed by Section 7 of the Act.

ATC/VANCOM OF CALIFORNIA, L.P.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."